



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 17 1998

The Honorable Thomas Daschle  
United States Senate  
Washington, DC 20510

Dear Senator Daschle:

This is in reply to your letter of July 2, 1998, which attached a recent complaint filed with the Federal Election Commission (FEC) against five major tobacco companies.

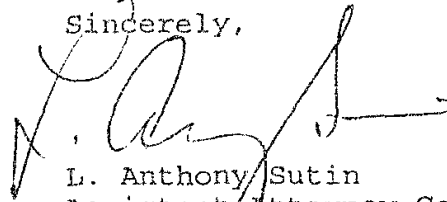
This complaint, filed by the National Center for Tobacco-Free Kids, alleges that in June 1998, five of the largest tobacco companies sought to kill pending tobacco legislation in the Senate by promising to sponsor television advertisements in support of Senators who voted to defeat the tobacco bill. As you know, such conduct, if substantiated, could run afoul of the strict limitations on corporate contributions and expenditures contained in the Federal Election Campaign Act of 1971, codified at 2 U.S.C §§ 431-455. This complaint was properly filed with the FEC, which under long-standing practice memorialized in a Memorandum of Understanding between the Department of Justice and the FEC, has primary responsibility for the review of such matters. We are confident that the FEC will evaluate this allegation with the careful scrutiny it deserves.

In addition, the allegation that tobacco companies may have promised favorable political advertising in exchange for a Senator's vote on specific legislation raises separate concerns under the bribery and gratuity statutes, contained in 18 U.S.C. § 201. The Criminal Division is presently examining this allegation to determine whether any further investigation is warranted.

The Honorable Thomas A. Daschle  
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Thank you again for bringing this matter to our attention.

Sincerely,

A handwritten signature in dark ink, appearing to read 'L. Anthony Sutin', is written over the typed name and title.

L. Anthony Sutin  
Assistant Attorney General

cc: Mr. Lawrence M. Noble  
General Counsel  
Federal Election Commission

United States Senate  
Office of the Democratic Leader  
Washington, DC 20510-7020

July 2, 1998

The Honorable Janet Reno  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Dear General Reno:

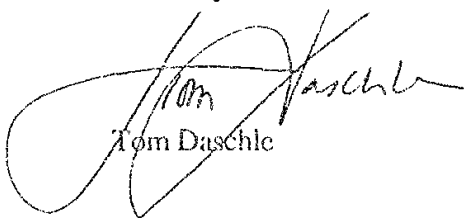
It is my understanding that a Department of Justice task force continues to actively investigate alleged violations of federal campaign finance laws. In light of that investigation, it is important that the task force be made aware of the attached complaint recently filed with the Federal Election Commission.

The National Center for Tobacco-Free Kids argues that five tobacco companies violated Federal election law by promising to mount a Fall television advertising campaign in support of Senators who voted to kill S. 1415, "The National Tobacco Policy and Youth Smoking Reduction Act." As you know, corporations are forbidden from making contributions in federal elections, including expenditures in the form of advertising. While the tobacco industry's \$40 million ad campaign to kill the tobacco bill was regrettable, it was not illegal. However, the National Center for Tobacco-Free Kids makes a persuasive case that this next phase of advertising is solely intended to affect the outcome of federal elections, not public policy.

While this matter warrants an independent investigation as an isolated incident, it is also important to review these circumstances with an eye toward their potential implications for the future. As the enclosed report from The Washington Post makes clear, the health insurance industry is now employing an identical advertising strategy in its attempt to defeat federal reforms of managed care practices and health maintenance organizations. Unless a prompt inquiry is undertaken to examine the actions of the tobacco industry in this case, I fear that these practices will constitute a trend, and result in yet another loophole in our campaign finance laws.

I know that the Department is conducting a balanced and fair investigation of campaign finance allegations, and am confident that appropriate action will be taken to address any improper activities that you may uncover.

Sincerely,



Tom Daschle

# CAMPAIGN For TOBACCO-FREE Kids

## NATIONAL CENTER FOR TOBACCO-FREE KIDS

June 29, 1998

General Counsel  
Federal Election Commission  
999 E. Street, NW  
Washington, D.C. 20463

Dear General Counsel:

Pursuant to 11 C.F.R. §111.4, the National Center for Tobacco-Free Kids files this Complaint against Philip Morris Inc., RJ Reynolds Tobacco Co., Brown & Williamson Tobacco Corp., Lorillard Tobacco Co., and United States Tobacco Company for what appears to be a violation of Federal election law, a violation which had a direct and serious impact on the June 18, 1998 Senate 57-42 vote on the Cloture petition to end the debate on S.1415, "The National Tobacco Policy and Youth Smoking Reduction Act."

Corporations are expressly forbidden under federal election laws from making "contributions" or "expenditures" in connection with federal elections and candidates are expressly prohibited from knowingly accepting contributions made by corporations. A contribution or expenditure includes direct or indirect payments or "anything of value" to influence a federal election. The Federal Election Commission has defined "anything of value" to include in-kind contributions, including advertisements. 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

Based upon reports that have been widely published in the news media, only hours before Republican senators were due to vote for or against cloture on S.1415, Senator Mitch McConnell informed his colleagues in a closed door meeting that if they voted to kill the tobacco bill, the major tobacco manufacturers were promising to mount a television ad campaign to support those who voted against the bill.

When Senator McConnell reported that the *goal* of the tobacco industry's ads to be run in the Fall *after* the critical vote was to *support* and *defend* those Senators who voted to kill the bill, he clearly demonstrated that these potential ads were not issue ads, but ads intended to influence the outcome of the upcoming election.

Communications, like the ads the tobacco industry is reported to have promised Republican Senators it would run, especially when made with the cooperation, coordination, or even just the consent of, or in consultation with, or at the request or suggestion of, any candidate do not qualify under any exception to the campaign finance laws, but rather confer something of "value" that constitutes an illegal "contribution" by the tobacco industry. FEC Advisory Opinion 1988-22. See Also: Clifton v. FEC No. 96-1812 (1<sup>st</sup> Cir. June 6, 1997) (1997 WL 292145).

Rarely is the connection between a campaign contribution and a vote on a critical issue so blatantly linked as occurred in this case. In this case, the quid pro quo was clear and it is clear that it was at least communicated by Senator McConnell, the Chairman of the National Republican Senatorial Committee, to his colleagues just before a crucial vote: Vote for the tobacco industry and the tobacco industry will advertise to help you during the upcoming election.

It is the combination of the stated goal of the ads (to support and defend senators who voted with it in the upcoming election) and the coordination and/or cooperation between the tobacco industry and the senators regarding the expenditures reflected in the promised ad campaign during the upcoming election that constitutes a serious violation of the election laws.

The facts upon which this complaint are based are contained in several reputable recent media reports and not upon the personal knowledge of the complainant because the tobacco industry's promises were made and communicated in secret behind closed doors. For example:

- The *Wall Street Journal* reported on June 25, 1998:

"On the day the Senate killed comprehensive tobacco legislation, Sen. Mitch McConnell stood up at a closed-door meeting of Republican senators to deliver the good news: The tobacco industry would mount a television ad campaign to support those who voted to knock off the bill. Such ads, Mr. McConnell says now, 'would generally be helpful to people who decided to kill this bill as a big tax increase on working Americans.' The Kentucky Republican, chairman of the Senate GOP campaign committee, played a prominent role in the bill's demise last week, his colleagues say, advising Senate Majority Leader Trent Lott of Mississippi that he could eliminate the measure without fear of voter reprisal . . . And the tobacco industry's \$40 million ad campaign against the bill helped convince members that public opinion could be swayed on the issue. . . . Republicans and industry ads will paint the issue as whether voters favor 'raising taxes to enrich trial lawyer,' he says."

- Time Magazine reported in its June 29, 1998 edition similar comments from McConnell:

"In the end, it was McConnell who was most persuasive. He told Lott that things had changed since the process had begun in April. His Senate candidates were safe; in tight Senate races, such as North Carolina and Kentucky, defending tobacco would help more than hurt. Besides, McConnell argued, the industry was promising to run ads on behalf of GOP Senators to defend them against charges that they'd killed the bill.

- The Washington Post reported on June 17, 1997:

"In some states, [Republican political consultant] Murphy said, the industry is trying to give cover to conservative senators...."

- The Washington Post reported on June 18, 1998:

"One tobacco ally said the industry assured Republican lawmakers the companies are willing to spend more money on ads between now and election day to continue its anti-tax, anti-big government message."

The five tobacco companies named in this complaint are the five companies who sponsored the \$40 million campaign against S. 1415 over the last several months and presumably are the companies to whom Senator McConnell referred when he spoke of the promised advertising campaign in support of candidates who voted against cloture in order to defeat this bill.

Therefore, we request that the FEC fully and promptly investigate this matter and put an end to the illegal "expenditures" by the tobacco industry on behalf of those senators who voted against cloture on S.1415.

Respectfully Submitted,

William Novelli  
President

Matthew L. Myers  
Executive Vice President and  
General Counsel

# The Washington Post

SATURDAY, JUNE 27, 1998

## Health Insurers Launch TV Ad Blitz to Stop Bills

By TERRY M. NEAL  
*Washington Post Staff Writer*

When it wanted to nix Congress's landmark anti-tobacco bill, the tobacco industry opened its checkbook and financed \$40 million worth of advertising that warned against the intrusive reach of big government.

Now the industry that provides health insurance to 160 million Americans is planning its own ad blitz that will similarly appeal to voters' disdain of federal intrusion. The effort comes at a time when Democrats and Republicans are lining up behind proposals in Congress that would force broad changes on health maintenance

organizations (HMOs) and other managed-care companies.

Among the reforms being considered are requirements that HMOs allow patients to see the physicians of their choice, that patients be allowed to sue HMOs for their care decisions and allowing patients to appeal denial of care and other HMO decisions to an independent third party.

This week, on the same day that a GOP task force led by Rep. J. Dennis Hastert (Ill.) proposed managed-care reform, the American Association of Health Plans (AAHP) began running television ads in the Washington, D.C., re-

See AD BLITZ, A4, Col. 1

# Like Tobacco, Health Insurers Turn to Ad Blitz to Try to Stop Legislation

AD BLITZ, From A1

that accuse politicians of exploiting the issue for political reasons and warn that increased regulation will raise costs and ultimately make health care unaffordable to many families.

Within weeks, the ads will begin airing in selected TV markets that include the districts of the GOP House leadership and key chairman, said Mark Merritt, chief of strategic planning and public affairs for AMIP.

"Hear about the politicians' new game... beating HMOs and other health plans to trick you into voting for them," the ad's narrator says as the camera focuses on a pinball being whacked with a stick, spinning a head of campaign buttons. "The politicians' new laws and regulations could cause nearly two million hard-working Americans to lose their health coverage."

Merritt said AMIP has spent close to \$2 million this year on other ads and public relations strategies around the country, but would not say how much it paid for the air time here. "We know that what's going on is a feeding frenzy and that there are a lot of politicians in the pool," he said. "But there are real economic and gratuitous costs associated with piecemeal care-tacking legislation."

It's impossible to say exactly how much the industry as a whole has spent in recent months on similar ads. Unlike the \$40 million ad campaign launched by four tobacco companies, thousands of large and small businesses around the country are contributing to the campaign against the HMO legislation.

Many companies are contributing through AMIP and the Health Benefits Coalition (HBC), which has raised about \$2 million into advertising.

Both groups have hired some of the

most influential lobbying and public organizations here.

Insurance industry officials know their image has suffered, so they have formed important alliances with the powerful business lobby, which shares concerns about cost and liability. One group lobbying against the proposals is the Healthcare Leadership Council, includes about four dozen chief executive officers and top officials from insurance companies, such as Cigna HealthCare, and big businesses such as Lilly & Co.

Unlike the tobacco companies, we have allies," said one insurance industry lobbyist who asked to remain anonymous.

What is noteworthy about the amount of money spent so far is that it comes even before the first committee vote has been taken in Congress. Legislation has been stalled as Republicans debated internally how to proceed with a politically popular proposal without violating key party tenets against big government. Most of the tobacco ad blitz came after a Senate committee voted 19 to 1 for an anti-tobacco bill, which was killed on the Senate floor last week.

There are groups lobbying for managed-care reform, but they do not appear to be as organized and cannot match the overall firepower of the forces opposed to it. One group, the PARCA Alliance, which supports the Patient Access to Responsible Care Act bill sponsored by Rep. Charles Whitlow Norwood Jr. (R-Cal.), has bought about \$100,000 worth of radio ads around the country, said Richard Green, a spokesman. Two other groups, Center for Patient Advocacy and Families USA, have been active in lobbying for managed care reform, but don't have the budgets to buy air time.

We've really gone out through the grass roots, our membership,

telling stories, letting their legislators know, going through the media," said center executive director Terrell Hall. "It doesn't take millions and millions of dollars to do that."

The opposition forces have a tough battle ahead. Recent polls have suggested that the public's desire for managed care reform is a top health issue, exceeding in one survey tobacco industry and campaign finance reform. Furthermore, managed care reform appeals to soft-focus partisan ideology.

But with more than 1,000 members, including some of the country's largest insurance companies—such as Humana, Blue Cross and Kaiser Permanente—AMIP has the kind of deep pockets it takes to run a costly and prolonged public relations campaign.

The Health Benefits Coalition, for example, is made up more than 30 organizations, including the U.S. Chamber of Commerce, the National Federation of Independent Businesses, and the Business Roundtable. Another of HBC's members is the Health Insurance Association of America, founded in 1955, with 15 million members and a \$15 million annual budget. "Harry and Louise" also had helped sink President Clinton's health care proposal in 1994.

One HBC ad that aired on commercial talk show host Oprah Winfrey's show during the April congressional recess likens Norwood's reform bill to a Frankenstein's monster-like experiment gone awry. "Remarkable, you've stitched together hundreds of new government mandates, putting Washington in control

of everyone's health care," an aide says to Congressman Frankenstein. "Those and other HMO ads largely have been targeted at conservative Republicans who have signed on to Norwood's bill or the so-called Patient's Bill of Rights supported by Clinton and most Democrats. One ad in the district of Rep. Lindsey Graham, (R-South Carolina), hints of pitting "liberal Democrats like Ted Kennedy" and signing on to the "most costly big government health care bill since the Clinton health care plan."

Graham, a member of the GOP's frebrand conservative class of 1994, said the ad actually endorsed him to constituents. He said the anger of his constituents against HMOs is palpable and bipartisan. "This is the big

issue for [Republicans] in November," he said. "It can be a good one for us or it can clean our clocks."

Other groups, such as the Coalition for a Patient's Choice, have achieved results without spending as much money. The coalition, which includes clients of the conservative public relations group Creative Concepts, has helped lobby against "various reform proposals." Those clients include Oliver In North and Phyllis Solady, both HMO advocates. "I don't take to heart a lot of money to fund a big black and white ad campaign," said Karen Kethigan, president of the Small Business Survival Coalition, which has 50,000 members and

other CRC client, the Small Business Survival Committee, set aside about \$250,000 for radio ads and has spent about \$75,000 on ad blitzing campaign for a Patient's Choice, which has achieved results without spending as much money. The coalition, which includes clients of the conservative public relations group Creative Concepts, has helped lobby against "various reform proposals." Those clients include Oliver In North and Phyllis Solady, both HMO advocates. "I don't take to heart a lot of money to fund a big black and white ad campaign," said Karen Kethigan, president of the Small Business Survival Coalition, which has 50,000 members and

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